

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**SAMANTHA M LOOSE**  
Claimant

**APPEAL NO. 13A-UI-03038-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**T & J INVESTMENTS LLC**  
Employer

**OC: 02/24/13  
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available  
Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The employer filed an appeal from the representative's decision dated March 8, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on April 16, 2013. The claimant participated personally. The employer participated by Tom Losasso, owner. The record consists of the testimony of Samantha Loose and the testimony of Tom Losasso. Official notice is taken of agency records.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a restaurant known as Los Amigos. The restaurant is located in Bettendorf, Iowa. The claimant was hired on June 16, 2009, as a part-time waitress/cook. The claimant was not guaranteed any certain number of hours when she was hired. The claimant can receive as many as 35 hours per week. At the time of the hearing she was getting an average of 18 hours per week. The claimant's hours vary and at the present time, the restaurant is experiencing a slow time. Business is typically slower in the winter months.

The claimant's wage records show that she earned \$3,940.00 in the first quarter of 2012. She earned \$5,020.00 in the second quarter of 2013; \$3,757.00 in the third quarter of 2012; and \$5,080.00 in the fourth quarter of 2012.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant is not eligible for unemployment insurance benefits. The evidence in this case showed that the claimant is a part-time employee and has always been a part-time employee. Her hours and therefore her wages fluctuate from quarter to quarter based on earnings in 2012. Mr. Losasso testified that business is typically slower in the winter months and this testimony is corroborated by the claimant's own wages, which were lower in the first quarter of 2012. That she would be earning less in the first quarter of 2013, which is when this claim was filed, is not surprising. There is no guarantee of hours. Iowa law is clear that a part-time employee who is working for the same hours and wages as contemplated in the original contract of hire is not considered partially unemployed. Benefits are therefore denied.

**DECISION:**

The unemployment insurance decision dated March 8, 2013, reference 01, is reversed. Benefits are denied effective February 24, 2013.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs